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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,561	11/16/2000	Gregory Ashton	AA315X/KL	6013

27752 7590 06/03/2003

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INTELLECTUAL PROPERTY DIVISION  
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EXAMINER
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GRAYSON, ANGELA J

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/03/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/700,561

Applicant(s)

ASHTON ET AL.

Examiner

Angela J. Grayson, Esq.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4,5 and 7-10 is/are allowed.
- 6) ☒ Claim(s) 2,3 and 6; 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2, 3, and 6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Under PCT Rules 46 and 66.8(b), the PCT examining officer rejected the amendments as being improperly made and as having no basis in the written description. Since the IA failed to allow the amendments, the amendments are not considered allowable under US practice either.

3. The handwritten amendments filed on page 29 lines 9-11 in the specification is objected to under PCT Article 34, Article 41, and 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material that is not supported by the original disclosure is as follows: On page 29 lines 9-11 the definition of prestrained entire length is given. According to this definition it shall refer to the entire length of an elastic material under a condition where a part of or the entire length of the elastic material is prestrained in the lateral direction. However, by this definition only a part of the length of the elastic material can be prestrained. Therefore, it is not possible

to change in the other text "the entire unstrained length" by the "entirety" as done on pages 28 and 29. Therefore, all these amendments would extend over the content as filed.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 11-16 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/31179 to Ashton.

As to claim 11, Ashton discloses a disposable garment having a front, back, and crotch region (Figure 1 members 26, 28, 30), disposable garment comprising a chassis, a waist elastomeric material (Figure 1 member 38; page 7 1<sup>st</sup> full ¶), a side elastomeric material (Figure 1 members 46,48), and seams joining parts of the disposable garment in the front region to parts of the disposable garment in the back region so as to form a waist opening and leg opening (Figure 1 member 32); wherein the continuous belt zone is extensible in an extension range up to an extension of at least about 125%, the continuous belt zone has a modulus of extensibility in the extension range, the modulus of extensibility at the extension of 125% is not greater than about 150g/% extension and the force to obtain the extension of 125% is not greater than 5,000g (Figures 12-14; page 20 1<sup>st</sup> full ¶ - page 21 2<sup>nd</sup> full ¶).

As to claims 12-16, Ashton discloses an absorbent article wherein the modulus of extensibility in the extension range up to the extension of about 125% is not greater

than about 150 g/% extension; modulus of extensibility at the extension of 135% is not greater than about 200 g/% extension; modulus of extensibility at the extension of 125% is not greater than about 120 g/% extension; modulus of extensibility in the extension range up to the extension of about 125% is not greater than about 120 g/% extension; the force to obtain the extension of 125% is not greater than about 4,500g. (Figures 12-14; page 20 1<sup>st</sup> full ¶ - page 21 2<sup>nd</sup> full ¶).

As to claims 19, Ashton discloses an absorbent article wherein the waistband panel has an original length before the waist elastomeric material is joined thereto, wherein the continuous extensible waistband is rendered extensible such that the continuous extensible waistband extends beyond the original length of the waistband panel. (Page 17 1<sup>st</sup> full ¶).

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashton.

As to claims 17 and 18, Ashton discloses a continuous belt zone but fails to disclose wherein the zone has an initial circumference of between about 220 mm and about 500mm; extensible up to a circumference of at least 650 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to define the continuous belt zone has having an initial circumference of between about

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220 mm and about 500mm; extensible up to a circumference of at least 650 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

8. Applicant's arguments, see Amendment A, filed March 6, 2003, with respect to the rejection(s) of claim(s) 1, 4, 5, 7-10 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of PCT Articles 34 and 41, and rules 46 and 66.8. This rejection is made final since Applicant had notice of the failure to make a proper amendment by way of the previous action as well as via the international preliminary examination report. Applicant is advised to either cancel the claims for which the improper amendment was made or argue why Examiner should consider and properly amend.

9. Applicant's arguments filed in Amendment A on March 6, 2003 have been fully considered but they are not persuasive with regard to claims 11-20. Applicant argues the Ashton reference does not disclose the claimed modulus of extensibility. Particularly that the Ashton reference parameters are not the same as those claimed by Applicant. Applicant asserts it is the job of the Examiner to show the parameters actually claimed are expressly disclosed or are inherent from the properties taught in the Ashton publication. However, the Examiner has met the burden of presenting a prima facie showing, particularly see page 20 1<sup>st</sup> full ¶ through page 21, and if there is a

difference between the claimed subject matter and that of the reference such a difference is to be presented by the Applicant.

***Allowable Subject Matter***

Claims 1, 4, 5, 7-10 are allowable.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Grayson, Esq. whose telephone number is 703-305-1806. The examiner can normally be reached on Monday-Thursday from 9:30 am to 7:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 703-305-1025. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

Angela J. Grayson   
May 29, 2003

  
JOHN D. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700